

**Letter of Findings Number: 04-20130601P  
Tax Administration  
For Tax Period May 2013**

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**ISSUE**

**I. Tax Administration—Penalty.**

**Authority:** [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

**STATEMENT OF FACTS**

Taxpayer filed its May 2013 ST-103 on June 22, 2013 and submitted a partial payment of sales tax. The Indiana Department of Revenue ("Department") determined that Taxpayer had not remitted sales tax or filed its ST-103 timely for the tax period May 2013. The Department issued a proposed assessment for base tax, a ten percent negligence penalty, and interest. Taxpayer protests the imposition of the penalty. An administrative hearing was held, and the following Letter of Findings results. Further facts will be supplied as required.

**I. Tax Administration—Penalty.**

**DISCUSSION**

The Department issued a proposed assessment for base sales tax, penalty, and interest for the tax period May 2013. Taxpayer protests the imposition of the penalty. The Department will determine whether the penalty imposed shall be waived.

A taxpayer who "fails to file a return for any of the listed taxes; [or] fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment . . . is subject to a penalty." [IC 6-8.1-10-2.1\(a\)](#). The Department shall waive the penalty if the taxpayer demonstrates that the failure to file a required return or pay the outstanding tax "was due to reasonable cause and not due to willful neglect." [IC 6-8.1-10-2.1\(d\)](#); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause by showing affirmatively that it used "ordinary business care and prudence" in not filing the required return or paying the tax due. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and will be determined on a case-by-case basis. [45 IAC 15-11-2\(b\)](#) and (c).

In this case, Taxpayer blames a "computer glitch" for its failure to file the ST-103 by its due date, but it did not provide any documentation supporting this allegation. Additionally, Taxpayer's filing and payment history indicates a pattern of late-filing and late-payment. Although Taxpayer has taken steps to ensure that it will meet the filing and payment requirements in the future, it has not affirmatively demonstrated that it had a reasonable cause for its failure to file the ST-103 by the due date and pay the proper amount of sales tax for the tax period May 2013. Therefore, the penalty imposed for the tax period May 2013 is not waived.

**FINDING**

Taxpayer's protest is denied.

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